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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/801,764 | 03/09/2001 | Guenter Hess | 197934US6 | 4543 |

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| EXAMINER |
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NOVOSAD, JENNIFER ELEANORE

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| ART UNIT | PAPER NUMBER |
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3634

DATE MAILED: 05/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/801,764

Applicant(s)

HESS ET AL.

Examiner

Jennifer E. Novosad

Art Unit

3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-6 and 8-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-6 and 8-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 March 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This final Office action is in response to the amendment of February 20, 2004 by which claims 1 and 9 were amended. Claims 1, 2, 4-6, 8, and 9-14 are pending.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 9 are rendered indefinite since the claims seek to improperly further define functionally recited subject matter, i.e., the water drops, through the recitation "whereby the water drops are distributed in a form of a substantially uniform film" (see line 4 of claim 1 and line lines 3-4 of claim 9), and thus the metes and bounds of the claim cannot be properly ascertained since one would not know whether applicant is claiming that "water drops" and "film".

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

As previously indicated, claims 1, 2, 6, 8, 9, 10, 13, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Llewellyn '993, alone.

Llewellyn '993 discloses an assembly defined by a dishrack in a dishwasher (not shown) whereby the dishrack (10) comprises a frame (see Figure 3) defined by metal rods (16 - see column 2, line 57) that have a plastic coating (18 - see column 2, line 57) which covers the frame (16 - see Figure 3).

It is noted that the limitation "configured to distribute water drops over a surface of the coating in a form of a substantially uniform film" (in lines 3-4 of claims 1 and 9) is merely functional. *Nevertheless*, when the dishwasher is in use, water used therein is dispersed in multiple directions in the form of water drops, and the shape of the rods, i.e., circular, would inherently cause the water and drops in the dishwasher to be distributed over an *upper* surface of the coating and frame. *Accordingly*, this distribution of water is considered to be a "substantially uniform film", insomuch as the claims recite this, taken relative to a very small area of the coating, e.g., two drops touching one another may be considered to define a "substantially uniform film". It is noted that the claims do not require that the uniform film be distributed over the "entire" surface of the coating. Note applicant's arguments (on page 6) that "so long as drops are distributed to form a substantially uniform film, this subject matter is covered by the claims".

The claims differ from Llewellyn '993 in requiring: (a) the surface roughness of the coating to be greater than or equal to 5 μ m (claims 1 and 9), and (b) the frame to be comprised of *steel* wire (claims 6 and 13).

With respect to (a), although Llewellyn '993 does not disclose the roughness of the coating, it can be seen from Figure 3 that the coating is substantially smooth. *Accordingly*, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have fabricated the frame having a coating with a surface

Art Unit: 3634

roughness, as called for in the claims and as determined through routine experimentation, thereby decreasing the risk of corrosion.

With respect to (b), although Llewellyn '993 does not disclose the frame being made from *steel*, it would have been an obvious engineering design choice to one of ordinary skill in the art at the time the invention was made to have utilized *steel* wire for the frame, thereby increasing the strength, stability, and rigidity of the frame.

As previously indicated, claims 4, 5, 11, and 12 are rejected under 35U.S.C.103(a) as being unpatentable over Llewellyn '993 as applied to claims 1, 2, 6, 8, 9, 10, 13, and 14 above, and further in view of Keeny *et al.* '000. Llewellyn '993 discloses the assembly as advanced above.

The claims differ from Llewellyn '993 in requiring: (a) the coating to be deposited by a coating process, and (b) the coating to comprise a polyamide.

Keeny *et al.* '000 teach that it is old in the art to utilize a plastic coating process (see column 4, lines 17-30) whereby a polyamide coating is deposited onto such devices as dishwasher baskets.

With respect to (a) and (b), it would have been obvious to one of ordinary skill in the art at the time the invention was made to have utilized a polyamide coating placed on the frame by a plastic coating process, as taught by Keeny *et al.* '000, thereby decreasing corrosion and wear resistance.

Response to Arguments

Applicant's arguments filed February 20, 2004, have been fully considered but they are not persuasive.

Art Unit: 3634

Firstly, applicant's argument that "a functional limitation is still a limitation, and cannot be ignored" (see the top of page 6) are noted. *However*, the limitation has not been "ignored". In fact, the examiner has discussed this limitation at length, in the previous Office action as well as above. *Also*, due to applicant's amendment, claims 1 and 9 are at present indefinite since it is unclear whether applicant intends to claim "water drops" and a "uniform film". *In particular*, is it applicant's contention that "water drops... in a... substantially uniform film" is the subject matter to which the allowability of the claim should be based?

Further, applicant's arguments (in the second full paragraph on page 6) that "the recited configuration manifests itself generally toward the end of a complete cycle, i.e., especially during the drying cycle. To the extent water is distributed over an upper surface of the coating and frame during the wash cycle of a dishwasher, as found by the Examiner, it is due to the amount of pressure of the water, not the configuration of the coating." are acknowledged. *However*, these arguments are considered to be more limiting than what is actually being claimed and therefore are not commensurate with the scope of the claims since the claims do not recite the "drying cycle". *Also*, it appears that applicant's argument in response to the Examiner's position that "water in the dishwasher is distributed over an upper surface of the coating" is an opinion. *Firstly*, it is the examiner's position that it is nearly impossible to determine whether water drops found on the coating of a frame in a dishwasher were caused by the pressure of the water or the coating itself. *However*, it is unclear from applicant's arguments whether applicant is saying that the water drops which form a uniform film on the coating and frame of the

Art Unit: 3634

instant invention is caused by the configuration of the coating itself. If so, applicant has failed to argue this point.

Regarding applicant's arguments (at the bottom of page 6) that "arguments based on mere measurement of patent drawings are of little value in the absence of a description in the specification of relative dimensions", it is noted that the examiner is not relying on the fact that the coating of Llewellyn "appears" to be smooth as a basis of rejection. This is merely an opinion and this opinion is not the basis of any specific rejection, as can be seen in the Section 103 rejection, advanced above. *Further*, with respect to the arguments (on the top of page 7) that "The Examiner assumes that surface roughness is a result-effective variable, but no support has been offered for this finding." and *In re Antoine*, is its applicant's contention that applicant did not utilize experimentation to arrive at the instant invention? *Finally*, with respect to the argument (on page 7) that "the Examiner assumes that there is a relationship between surface roughness and corrosion" it is noted applicant states in paragraph [0003] of the specification of the instant invention that organic polymers are utilized for anticorrosive purposes and that "smooth surfaces are particularly preferred". *Thus*, this to the examiner is enough support that surface roughness is related to corrosion.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

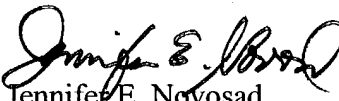
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

Art Unit: 3634

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is (703)-305-2872. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on (703)-308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jennifer E. Novosad
Primary Examiner
Art Unit 3634

Jennifer E. Novosad/jen
April 30, 2004